



STATE OF INDIANA

**OFFICE OF THE ATTORNEY GENERAL**

INDIANA GOVERNMENT CENTER SOUTH, FIFTH FLOOR  
302 WEST WASHINGTON STREET 1 INDIANAPOLIS, IN 46204-2770  
[www.AttorneyGeneral.IN.gov](http://www.AttorneyGeneral.IN.gov)

**CURTIS T. HILL, JR.**  
INDIANA ATTORNEY GENERAL

TELEPHONE: 317.232.6201  
FAX: 317.232.7979

June 19, 2020

The Honorable Theodore D. Chuang  
UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
6500 Cherrywood Lane  
Suite 245A  
Greenbelt, MD 20770

Re: American College of Obstetricians & Gynecologists et al.  
v. United States Food and Drug Administration et al, Case No. 8:20-cv-1320-TDC  
Notice of Intent to File Motion to Intervene of Right by the State of Indiana,  
the State of Nebraska, the State of Louisiana, and the State of Oklahoma

Dear Judge Chuang:

Proposed Intervenor in the above-captioned case (hereinafter, “the States”) hereby give notice of their intent to file (1) a motion for leave to supplement their motion to intervene with a proposed answer, *nunc pro tunc* to when the motion to intervene was filed, or, (2) in the alternative, a renewed motion to intervene which will include a proposed answer.

With regard to the States’ intended motion, the States have corresponded with counsel for all parties in this suit via email at 3:45 p.m. on Thursday, June 18, 2020: Plaintiffs declined our invitation to meet and confer by telephone and intend to oppose the States’ motion, while Defendants have not, after twenty-four hours, responded. The States now seek a pre-motion conference with the Court.

In their opposition to the States’ motion to intervene, Plaintiffs objected that the States had not attached “a pleading that sets out the claim or defense for which intervention is sought,” as described by Rule 24(c). *See* ECF 61 at 11. Plaintiffs cited no authority applying Rule 24(c) in the context of preliminary injunction proceedings, which commonly dispense with ordinary procedures in the interest of swiftly resolving urgent claims. In this case, the States had endeavored to provide such a pleading, but had not found it possible in the time allowed for the States to seek intervention. Any error, moreover, was harmless to Plaintiffs; witness that this Court held a hearing on Plaintiffs’ motion for a preliminary injunction today without any answer from Defendants, only two days after Plaintiffs filed an Amended Complaint. Out of an abundance of caution, the States were nonetheless preparing a proposed pleading for filing when this Court denied the motion to intervene, and are able to file it in short order.

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Insofar as Plaintiffs believe the motion to intervene was procedurally defective under Rule 24(c), the States wish to remedy any defect in order to preserve their rights in the case. The States therefore propose two possible approaches to do so by motion.

First, a motion to supplement the motion to intervene with a proposed answer to the Amended Complaint, *nunc pro tunc* to when the motion was filed, would retroactively correct any technical concern as to the original motion. Second, in the alternative, the States may renew their motion to intervene, attaching the proposed answer to the Amended Complaint. The renewed motion to intervene would not raise new arguments or require new briefing; its sole purpose would be to ensure the States have preserved their intervention rights in light of the Amended Complaint.

The States wish to confirm what procedural vehicle the Court would prefer for presentation of the States' proposed answer. The States therefore respectfully request that the Court set a pre-motion conference and allow them to file an appropriate motion.

Respectfully submitted,

/s/ Alexander A. Bush

Alexander A. Bush, Esq., Bar No.: 13392  
ROWE WEINSTEIN & SOHN, PLLC  
1401 Rockville Pike, Suite 110  
Rockville, MD 20852  
(301) 770-4710  
(301) 770-4711 (facsimile)  
abush@rowepllc.com

Gene C. Schaerr\*  
Stephen S. Schwartz\*  
SCHAERR JAFFE LLP  
1717 K. Street NW, Suite 900  
Washington, DC 20006  
(202) 787-1060  
(202) 776-0136 (facsimile)  
gschaerr@schaerr-jaffe.com

*\*Admitted Pro Hac Vice*

/s/ Thomas M. Fisher

Thomas M. Fisher\*  
Solicitor General  
Julia C. Payne\*  
Deputy Attorney General  
Office of Indiana Attorney General  
IGC South, Fifth Floor  
302 W. Washington Street  
Indianapolis, IN 46204  
(317) 232-6255  
(317) 232-7979 (facsimile)  
tom.fisher@atg.in.gov

Elizabeth Baker Murrill\*  
Solicitor General  
Joseph Scott St. John\*  
Deputy Solicitor General  
Office of Attorney General Jeff Landry  
1885 North Third Street  
Baton Rouge, LA 70802  
(225) 485-2458  
(225) 326-6490 (facsimile)  
murrille@ag.louisiana.gov

*Counsel for Intervenor States of Indiana, Louisiana,  
Alabama, Arkansas, Idaho, Kentucky, Mississippi,  
Missouri, Nebraska, and Oklahoma*